

PORTUGUESE WINES.

LETTER

FROM

THE SECRETARY OF STATE,

TRANSMITTING

A communication from the minister of Portugal relative to duties on wines.

• JULY 13, 1846.

Read, and laid upon the table.

DEPARTMENT OF STATE,

Washington, June 26, 1846.

SIR: I have the honor of enclosing to you the copy of a note which I received yesterday from M. Figaniere, the minister of Portugal to the United States, in which he enters into an argument to prove that the *ad valorem* duties upon Portuguese wines, contained in the "bill reducing the duties on imports, and for other purposes," now before the House of Representatives, would, if passed into a law, violate the third article of the subsisting treaty between the two countries.

Whilst it does not become me, in this communication, to express any opinion on the subject, I deem it my duty to present his note, through you, to the Committee on Foreign Affairs. I would also take the liberty of suggesting whether it might not be proper, as a mark of respect to the government of a friendly power, that this note should be printed.

I am, sir, with great respect, your obedient servant,

JAMES BUCHANAN.

Hon. C. J. INGERSOLL,

*Chairman of Committee on Foreign Affairs,
House of Representatives.*

Mr. De Figaniere to the Secretary of State.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Georgetown, D. C., June 24, 1846.

SIR: The legislature of the United States being now occupied discussing the bill reported by the Committee of Ways and Means of the House of Representatives, entitled "A bill reducing the duty on imports, and for

other purposes," in which is proposed to impose ad valorem duties upon the wine of Portugal and its possessions, as a substitute for the present specific duties on that article, I am induced respectfully to call your attention to the stipulations of the subsisting treaty between Portugal and the United States, in order to show that the proposed substitution of duties on the wine of that country, if adopted, cannot be deemed otherwise than as subverting the spirit and the letter of that treaty.

The third article stipulates, that "no higher or other duties shall be imposed on the importation, into the kingdom and possessions of Portugal, of any article the growth, produce, or manufacture of the United States of America; and *no higher or other duties* shall be imposed on the importation, into the United States of America, of *any article* the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are, or shall be, payable on the *like article*, being the growth, produce, or manufacture of any other foreign country."

In order to arrive at the true intention of the parties for making the treaty, and the special stipulation above quoted, the state of things bearing upon the question at the time of its signature, August 26, 1840, should be examined.

At that time, wine, whatever its quality, paid the following duties in the United States:

That of Germany, Spain, and the Mediterranean	-	3 $\frac{3}{4}$	cents per gal.
The red of Austria and of Spain	-	2 $\frac{1}{2}$	do
The sherry and Madeira	-	12 $\frac{1}{2}$	do
And all other wine	-	7 $\frac{1}{2}$	do

Therefore, at the time the treaty was negotiated, wine paid *specific duties*; that is, a certain amount for a given quantity of wine, without distinction of quality, cost, or value of any denominated wine.

This was not the case at that particular time only; it was but continuing the mode of imposing duties on wine adopted in the first tariff (1789) of the United States, and which has prevailed ever since, so as to render it *the prescriptive, the established mode* of imposing duties on this article, and as such it must have been viewed and understood both by Portugal and the United States when negotiating their treaty; and the two plenipotentiaries and their governments were well aware that port and Madeira wine, which almost exclusively constitutes all the Portuguese wine exported to the United States, costs somewhat more—from causes unnecessary to enumerate here—with few exceptions, than all other descriptions of wine imported into this country; and that if subject to an ad valorem duty, this would materially lessen, if not altogether destroy the trade, to foster which the treaty was made, under the implied faith that no change would be resorted to in the then and previously established mode of levying such duty.

The proviso inserted in the concluding part of the third article of the treaty with Portugal will furthermore sustain, if more evidence were necessary, this interpretation of that article.

At that period the United States were bound, by convention with France, to levy certain *specific duties*, and no others, on French wine. Although the clause referred to precluded Portugal from demanding the same favor as then enjoyed by France for her wine, the bare mention of this stipulation between the United States and France, incorporated, as it were, in the treaty with Portugal, must be viewed as strengthening the *implied*

faith above mentioned, with respect to the form of imposing the duty on the article in question, so long as the treaty continued.

Besides, how are the words *no higher or other duties* to be understood, or complied with, if not extended to and comprehending both *the rate and the amount* of duty? A uniform specific duty upon the quantity or measure, can alone fulfil both the intention and the words of the treaty. This appears its only reasonable, just, and practicable construction.

The ad valorem duty proposed in the bill referred to will, consequently, oppose both the design and the letter of the treaty, as is clearly demonstrated in the enclosed tables, prepared and calculated upon official returns of the importation of wine for the year ending 30th June, 1845, and to which I beg leave to call your attention.

They will show that the proposed ad valorem duty of thirty per cent., far from *reducing* the duty on wine of Portugal, as the title of the bill would imply, will, on the contrary, greatly *raise* it; and that, although not exceeding in nominal per centage the duty imposed on other wine, it will, nevertheless, be in effect a *higher duty* on the wine of Portugal than on the same article of other nations, which *difference* of duty is contrary to the express terms of the treaty between Portugal and the United States.

It will be observed that Madeira wine in cask would pay a duty equivalent to 43.06 cents per gallon, port 18.69 cents, and other red and white wine of Portugal 18.36 cents per gallon; while the wine in cask of Spain and France would only be subject to 8.48, 7.34, and 5.79 cents per gallon, respectively; and those of Austria and Sardinia as low as 3.50 and 2.66 cents per gallon.

A still greater difference would result against Portugal with respect to bottled wine; and, in like manner, taking the aggregate importation of wine from each country, the duty to be paid on that of Portugal would be equivalent to 22.55 cents per gallon; much higher than that which would fall on the wine of other nations, some of which would be subject to only 3.90 and 2.78 cents per gallon.

It has been settled by the government of the United States itself, in Treasury circular of 16th July, 1844, issued in consequence of claims submitted by her Majesty's legation similar to the present, that wine, with reference to the treaty with Portugal, is an article not to be classed or subdivided for the purpose of imposing other or higher duties than such as are or may be levied upon the wine (without reference to quality or value) of any other foreign country.

It was also decided about the same time, by the Secretary of the Treasury, upon an application by other parties, in consequence of the above circular, for *imitation* port and Madeira wine to be admitted on the payment of the same duty as that levied upon the pure article, that the benefit insured by the treaty with Portugal to the wine of that country could not extend to nor include the wine, however denominated, of other countries with whom similar treaty stipulations did not exist.

It will be perceived, nevertheless, that in disregard of these two just and solemn decisions, the bill now before the Congress of the United States, while it designs, on the one hand, to make no distinction between the wine of the countries with whom the United States have reciprocity treaties, and of those with whom no such treaties exist, thus cancelling the obligation to extend favor to the produce of the former for the like favor there enjoyed by the products of the United States, will, on the

other hand, if passed and approved in its present shape, as respects the wine duty, not only cause a higher duty to be levied on the wine of Portugal, but also exclude it altogether from the American market, which will be flooded with the inferior wine, and the deleterious imitations of foreign and home manufacture.

It will be admitted that the treaty was intended to exclude all unfriendly legislation by one party against the other, and which might injure either party to the treaty. Under this most righteous construction of all commercial treaties, it must also be conceded that Portugal would have reason to complain were the provision in the bill under consideration to pass, as the commerce with Portugal would be prostrated, however unintentional on the part of the United States, and her trade in genuine wine annihilated, notwithstanding the protection and guaranty of the treaty.

It is needless, I presume, further to recur to the purposes for which the treaty with Portugal was negotiated, at the invitation of the United States, having already been developed in this note; and more fully so, and not controverted, on a former occasion, in a communication addressed to your department on the 21st January, 1843.

If, therefore, the design of the treaty were now to be set aside, as most assuredly would be the case as regards Portugal, should the proposed change in the wine duty be adopted, but which I sincerely trust will not be the case while all the advantages of the stipulations were to continue in Portuguese ports in favor of American produce, besides the benefit resulting to the shipping interest of the United States, I have no hesitation in stating that so unexpected and *unreciprocal* a measure would be most painful to the Queen's government, as it would most undoubtedly be obliged, when apprised of the act by which it will deem the object and the words of the treaty to have been disregarded, to direct me to inform the government of the United States of the intention of the Portuguese government to terminate the said treaty, however much it may regret to be compelled to take that step.

I avail myself of this occasion to renew to you, sir, the assurances of my most distinguished consideration.

DE FIGANIERE E MORAO.

Hon. JAMES BUCHANAN, &c., &c., &c.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The memorial of the undersigned, merchants of the city of Boston, importers and dealers in wines, would respectfully urge upon the consideration of your honorable bodies the impolicy of substituting ad valorem duties on wines and liquors, in place of a specific duty, for the following, among other reasons: The actual cost of all wines is frequently determined by the peculiarity of the soil, but always by the value of soil, labor, and capital employed in their production, and this is fixed; but their market value is governed by grades and tastes. A wine may be shipped at a low rate, which, after arrival here, and a variety of changes, first caused by the voyage, then from the repose here, and the influence of the climate, may prove more valuable than when originally shipped; and thus,

also, costly wines, from the same causes, will deteriorate. In many cases, wines, at their actual cost, will not bear the proposed rate of ad valorem duty, and this will lead to fraudulent invoices by shippers whose cupidity, as foreigners, will tempt them to evade the laws. In such case, no one can undertake to decide their true value, wine being an article eminently subject to the capriciousness of taste ; besides which, it is a well-known fact that all wines, after a sea voyage, are for some time sick, as it is technically termed by the trade, and it is often a question whether, on their recovery, they will be as good as prior to shipment. It is believed that there is no article in the whole range of imports whose actual value, at the time of landing, it would be so difficult to determine as that of wine. To take the present aggregate invoice cost of wines entered at the custom-houses as a data upon which to fix an estimate for the proper rate of ad valorem duties, would be erroneous, inasmuch as most of the wines now consigned to the United States are invoiced far above the amount that they actually produce to the shipper. While, therefore, under an ad valorem duty, a general reduction in the invoice cost of wines might materially reduce the amount of revenue upon which the government would have based their calculation, we foresee other evils resulting both to ourselves and the revenue, in the door which would be opened to fraudulent invoices of spurious and deleterious imitations of wines, which, at a low cost and duty, would shut out the genuine article, thus injuring our regular trade, and at the same time indirectly defrauding the revenue. In fine, while it does not seem our province to point out other articles upon which, in the adjustment of the tariff, an ad valorem duty might operate prejudicially, we are satisfied that, to the case of wines, as a general law, the ad valorem principle cannot be safely or satisfactorily applied. Your memorialists believe that a specific duty may be levied on wines and liquors lower than the present duties on some, and higher on others, (discriminating more favorably upon those the growth of those countries with which we have reciprocal treaties,) which, while it would secure more revenue, would protect both the government and importers from frauds that doubtless will be practised if an ad valorem duty be levied. They therefore respectfully pray that, instead of an ad valorem duty, equitable specific duties may be levied upon all wines and liquors.

Robert G. Shaw & Co.
 Bates & Co.
 Edw. Codman & Co.
 Abel Phelps
 N. Reggio & Peloso
 Elijah Loring
 John Tyler, jr.
 W. Worthington & Co.
 Hawes, Gray, & Co.
 Jno. D. & M. Williams

Isaac Winslow & Sons
 Lombard & Whitmore
 W. B. Reynolds
 Barnard, Adams, & Co.
 Will. Perkins
 Bramhall & Howe
 Hallet & Blake
 Josiah Bradlee & Co.
 Homer & Sprague.

Boston, June 18, 1846.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

The memorial of the undersigned, merchants of the city of Philadelphia, importers of or dealers in wines and liquors, would respectfully represent the impracticability and impolicy of attempting to substitute a system of *ad valorem duties* on wines and liquors for a *specific duty*, for the following among other reasons, viz :

The actual cost of all wines is frequently determined by the peculiarity of the soil, but always by the cost of the soil, labor, and capital employed in their production, and this is fixed ; but their marketable value is regulated by *grades and tastes*.

A wine may be shipped at a *low rate*, which, after arrival here, by the change caused by the voyage, repose here, and a variety of changes from climate to which it is susceptible, may prove *more valuable* than originally supposed ; and so also *costly wines*, from the same causes, will *deteriorate*.

Wines at their actual invoice cost will not bear the proposed rate of *ad valorem duty*, and this will lead to fraudulent invoicing by shippers, whose cupidity will tempt them thus to evade the law. In such case, *no one* can undertake to decide their true value ; wines being an article subject to the *capriciousness of taste*.

Besides which, it is a *well known fact* that *all wines* after a sea voyage are for some time *sick*, as is technically termed by the trade ; and it is often a questionable matter whether, on their recovery, they will be as good as prior to shipment.

There is no article in the whole range of imports that it would be more difficult, and in fact often so entirely *impossible* for any one to determine, on its landing from shipboard, the proper actual value of, as wines.

To take the present aggregate invoice cost of wines entered at the custom-houses as a data upon which to fix an estimate for *ad valorem duties*, leads to erroneous conclusions ; because, in very many cases of wines *consigned* to the United States for sale, not the one-half of said invoice is realized to the shippers ; and, consequently, in fixing the invoice amounts, a great reduction must be looked for when wines shall be shipped from Europe subject to an *ad valorem duty* here.

And that the foreign invoice will have to be taken, no one, who is at all conversant with the difficulty of determining the cost of wines, on landing, by the taste, can doubt.

Your memorialists believe that a fair *specific duty* may be levied on wines and liquors *lower* than the present duties on some now levied, and *higher* on others, which, while it would secure even more revenue than the present, would protect both the government and importers from frauds that will unquestionably be practised if an *ad valorem duty* is levied.

They therefore pray that instead of an *ad valorem duty*, *equitable specific duties* may be levied on all wines and liquors.

Richards & Bispham
Newman & Beale
S. J. Baldwin
Sam. W. Welsh
Phil. P. Green
C. L. Desanque
Sam. Bispham

S. Morris Waln & Co.
Bevan & Humphreys
Grant & Stone
Anderson, White, & Lippincott
Wm. W. Boyle
White, Stevens, & Co.
Geo. Zantzinger

John Garrison
Jno. Dickson & Co.
B. Nurse Jones
Mulford & Alter
Carson & Newbold
Rob. Irland
Goddard & Packer
Rob. Stein & Co.
L. M. Wartman
F. J. Figueira
D. B. Stacey
Jac. Snyder, jr.

Rob. Donnell
Lewis, James, & Co.
Geo. & Jas. Benners
Wm. Harding, jr.
Ths. Mercer, Son, & Co.
Jno. G. Reading
Edw. M. Lewis & Co.
Jno. M. Caules.
Jno. Lippincott, jr.
Cromlien & Brother
Russell & Blair.

To the honorable the House of Representatives of the United States of America :

Your memorialists, engaged in the importation of foreign wines in the city of New York, being impressed with the opinion that, in the event of any contemplated change in the present mode of levying duties upon wines, ad valorem duties may be substituted, beg leave respectfully to represent :

That an ad valorem duty, whether assessed upon the invoice value or upon the actual market price, presents great difficulties and highly detrimental consequences to the fair dealer and to the revenue ; as, if levied upon the cost of invoice, the dishonest merchant would undervalue the article without fear of detection, it being quite impossible to ascertain the price of such an article as wine, the value of which depends not only upon the often disputed taste or flavor, but frequently upon the reputation of a peculiar brand, and, when imported upon American account, is seldom or never purchased for cash, but obtained in barter for staves, flour, or other American produce, or is exported to this country for sale on account of the proprietors of the vineyards.

That, if the duty be assessed upon the actual market price, the same difficulties present themselves to ascertain the value, which is constantly changing, of numberless qualities of any given denomination of wine ; besides, the mode of levying the duty and its amount should of necessity be uniform in all the ports of entry of the Union, and this uniformity could not be obtained if, as often happens, the value of wine were thirty per cent. higher in New Orleans than in Boston.

Your memorialists, therefore, suggest that the duty upon wine may remain, as it has generally heretofore been, specific, as all forms of ad valorem duty upon such an article appear to offer insurmountable objections.

March & Benson
Wilson & Brown
C. Meletta
Schermerhorn & March
Bache McEvers
John Osborn
Maitland, Converse, & Co.

Siffkin, Ironsides, & Co.
Ed. Blackburn
Francia & Co.
Th. Stalker
Hilger & Co.
Renauld & François
J. Reyburn

J. C. Kunkelman
 J. Michel
 Aguirre & Galway
 V. Barsalow & Co.
 Aymar & Co.
 Davis, Brooks, & Co.
 Collomb & Helin
 Barclay & Livingston
 H. L. Routh & Son
 H. & W. Delafield
 A. Beninger & Co.
 C. Heerd
 G. L. Castillon
 J. Malhun & Co.
 Chamberlain & Phelps
 Al. M. Lawrence
 Geo. Meyer & Sons
 Grosheim & Clapham
 Alex. Soltan

P. W. Engs & Son
 Cazet & Antoine
 W. D. Cuthbertson
 W. Depew
 P. J. Figueira
 H. S. Leverich
 Ch. F. Quincy
 Bouchaud & Thebaud
 P. Harmony's Neph. & Co.
 H. Selby Hayward
 John Caswell
 Wm. Neilson
 P. W. Searle
 Gilbert Davis
 Souther, Brothers, & Co.
 W. C. Maitland
 Nowland & Aspinwall
 Wyckoff & Scrymson

NEW YORK, January 20, 1846.

Wines imported in the year ending 30th June, 1845, as per official returns, with calculations of proposed duty, relative specific proportions, averages, &c.

In casks.	Gallons.	Invoice cost.	Duty, 30 per cent.	Equal to a specific duty per gallon, of
Madeira - - - -	101, 176	\$145, 237	\$43, 571	43.06 cts.
Sherry - - - -	23, 616	38, 289	11, 487	48.64 "
Canary - - - -	1, 778	672	202	11.36 "
Port - - - -	260, 593	162, 358	48, 707	18.69 "
Burgundy - - - -	325	366	110	33.85 "
Teneriffe - - - -	5, 846	6, 426	1, 927	32.96 "
Claret* - - - -	1, 051, 862	249, 633	74, 890	7.12 "
Marsala† - - - -	62, 873	31, 699	9, 501	15.11 "
Others of Sicily† - - - -	47, 717	14, 364	4, 309	9.03 "
Other red, of France* - - - -	380, 946	73, 558	22, 067	5.79 "
Austria - - - -	343	30	9	2.66 "
Sardinia - - - -	692	90	27	3.90 "
Portugal, & possessions - - - -	113, 607	69, 532	20, 860	18.36 "
Other white, of France† - - - -	455, 927	128, 986	38, 696	8.48 "
Austria - - - -	17	4	1	6 "
Portugal, & possessions - - - -	135, 791	82, 193	24, 658	18.16 "
Red and white, of Spain - - - -	300, 609	73, 535	22, 060	7.34 "
Germany - - - -	23, 746	7, 782	2, 335	9.83 "
Mediterranean - - - -	51, 484	12, 900	3, 870	7.51 "
	3, 018, 948	1, 097, 624	329, 287	

NOTE.—Equal to an average specific duty of 10.90 cents per gallon.

* In these descriptions is included the miscalled *imitation port wine*.

† In these descriptions are included the so called *imitations of Madeira and Sherry wines*.

Same calculations on wines in bottles.

Description.	Gallons.	Invoice cost.	Duty, at 30 per cent.	Equal to a specific duty per gallon, besides duty on bottles, of
Burgundy - - - -	218	\$791	\$237	\$1 08.71
Champagne - - - -	101,464	303,399	91,020	89.70
Port - - - -	2,384	3,133	940	39.44
Claret - - - -	48,688	40,864	12,259	25.17
White and red, of France - -	31,586	14,630	4,389	13.89
Austria - - -	49	10	3	6.12
Portugal, and pos- sessions - - -	1,005	1,806	542	53.93
Spain - - -	53	50	15	28.30
Germany - - -	3,931	7,453	2,236	56.88
Mediterranean - -	504	423	127	25.19
Not enumerated - - -	2	3	1	50
	189,884	372,562	111,769	

NOTE.—Equal to an average specific duty per gallon, of 58.86 cents.

On all the importation.

Wine.	Gallons.	Invoice cost.	Duty, at 30 per cent.	Equal to a specific duty per gallon, of
In casks - - - -	3,018,948	\$1,097,624	\$329,287	} 13.71 cts.
In bottles - - - -	189,884	372,562	111,769	
	3,208,832	1,470,186	441,056	

The above importation paid, as per tariff of 1842, \$313,195 71, or 21.30 per cent.
Proposed increase on a similar importation - 127,860 29, or 8.70 per cent.

441,056 00, or 30 per cent.

N. B.—The estimated increased importation in the treasury estimates is put down at \$500,000, or, at 30 per cent., \$150,000 increased revenue. This, it is apprehended, will prove not only fallacious, but the difference will be a decrease to the same, if not to a larger amount; as, under ad valorem duties, the invoices will show a great reduction in the cost of the same quantity of wine.

Average proposed duties on wines in casks, classified by nations, and their relative specific duties.

Wines of	Gallons.	Duty, 30 per cent.	Equal to a specific duty per gallon, of
Portugal - - - -	611,167	\$137,796	22.55 cents.
Sicily - - - -	110,590	13,870	12.48 "
Spain - - - -	331,849	35,676	10.75 "
Mediterranean - - - -	51,484	3,870	7.51 "
Germany - - - -	23,746	2,335	7.34 "
France - - - -	1,889,060	135,763	7.19 "
Sardinia - - - -	692	27	3.90 "
Austria - - - -	360	10	2.78 "

Same in bottles, except Burgundy and Champagne.

Wines of	Gallons.	Duty, 30 per cent.	Equal to a specific duty per gallon, of
Germany - - - -	3,931	\$2,236	56.58 cents.
Portugal - - - -	3,389	1,482	43.73 "
Spain - - - -	53	15	28.30 "
Mediterranean - - - -	504	127	25.19 "
France - - - -	80,274	16,648	20.74 "
Austria - - - -	49	3	6.12 "